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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,	)	No. CR 07-00506
	)	No. CR 07-00508
Plaintiff,	)	
	)	GOVERNMENT'S SENTENCING
v.	)	MEMORANDUM
	)	
DAVID RAY HERNANDEZ,	)	
aka "SHAGGY"	)	
	)	
Defendant.	)	

Defendant David Ray Hernandez comes before the court for sentencing pursuant to a plea agreement under Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, having pled guilty to count one of the captioned indictment numbered CR-07-00506-JW charging him with conspiracy to distribute 5 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(B)(viii).

Further, the defendant DAVID RAY HERNANDEZ has stipulated that at the time of the offenses charged against him in the above-captioned indictments, he previously had been convicted of felony drug offenses, which convictions were final, as follows:

**Sentencing Memorandum (Hernandez)**

1. On or about 02/02/2000 in San Benito County Superior Court, Docket Number: CR9937444, the defendant was convicted of California Health & Safety Code Section 11378, and was sentenced to 36 months probation, 120 days imprisonment.

2. On or about 05/28/2003 in Santa Clara County Superior Court, Docket Number: F9987223, the defendant was convicted of California Health & Safety Code Section 11377(A), and sentenced to 60 days probation, 60 days imprisonment.

3. On or about 01/10/2007 in San Benito County Superior Court, Docket Number: CR0600784, the defendant was convicted of California Health & Safety Code Sections 11378 and 11359, and sentenced to 32 months imprisonment.

By reason of his conviction on any of the above-listed charges, pursuant to Title 21, United States Code, Sections 841(b)(1)(B) and 851, defendant DAVID RAY HERNANDEZ is subject to increased punishment, that is, a 10-year mandatory minimum prison sentence, a maximum prison sentence of life, a maximum fine of \$4,000,000, and a maximum supervised release term of life (minimum: 8 years).

Consistent with the plea agreement, the Government recommends the stipulated sentence of **120 months imprisonment**, to be followed by four years of supervised release (with conditions to be fixed by the Court), no fine, and a \$100 special assessment, with no restitution or forfeiture to be imposed, defendant to pay the special assessment at the time of sentencing.

The government agrees to move to dismiss the open charges pending against the defendant at the time of sentencing, that is Counts 2-4 of the indictment in case CR 07-00506, as well as one count indictment in case number CR-07-00508-JW.

JOSEPH P. RUSSONIELLO  
United States Attorney

Dated: 4/24/08

/S/  
THOMAS M. O'CONNELL  
Assistant United States Attorney